CORRESPONDENCE.

WASHINGTON, D. C.

TO a lawyer the most interesting point in Washington is the old Senate Chamber at the Capitol, for it is there that the Supreme Court of the United States now sits.

De Tocqueville, writing over fifty years ago, declared that the Supreme Court was "placed at the head of all known tribunals, both by the nature of its rights and the class of justiciable parties which it controls." And one who contemplates the history of the court during the ninety-seven years of its existence, as to the work that it has done, both in moulding the development of the constitution and in adjusting and regulating the conflicting rights of the federal government and the several State sovereignties, will agree with the learned Frenchman.

October Term 1886 has not been lacking in cases of far-reaching importance. It was ushered in by the judgment in *Wabash, St. Louis and Pacific R.R. Co.* v. *Illinois*,[1] which prepared the way for the enactment of the Interstate Commerce Law. Whatever the defects of that measure may be, either in its provisions or in the policy which it embodies, the commissioners to whom its execution has been entrusted are men of such a stamp as to give promise that the best result of which it is capable will be derived from the law; indeed, a more judicious selection could hardly have been made, the appointment of Judge Cooley to the long term especially meeting with universal approbation. Following the decision of the Wabash case have come a series of others, involving the power to regulate commerce, among them the *Drummers' Tax Cases*, very recently decided, in which Mr. Justice Bradley delivered one of his most masterly opinions.

A case of especial interest to the friends of the Indians in Massachusetts was that of *Choctaw Nation* v. *United States*,[2] in which a large sum of money, over two and a half million dollars, was at last recovered by the Choctaws in satisfaction of injuries suffered by them in the execution of the treaty of 1830; and one will hardly read the statesmanlike opinion of Judge Matthews without becoming satisfied of the justice and sound morality of the conclusions reached, even if a more technical consideration of the principles of law applicable to the question may seem to render the result more doubtful. No appropriation was made by the last Congress to pay this judgment.

United States v. *Rauscher*[3] is noteworthy as involving the much-mooted question of the right to try a person for a crime other than that for which his extradition was secured; the opinion of the court denying the right, under existing treaties, may not be wholly satisfactory as a legal argument, but it must not be forgotten that the question depends rather on political than judicial principles for its proper determination. Indeed, this case and the Choctaw case excellently illustrate how the court is constantly called upon to deal with matters which in all other countries are regarded as not pertaining to the judicial power; and they also show a sound tendency to

[1] 118 U.S. 557. [2] 119 U.S. 1. [3] 119 U.S. 407.

treat such questions in a broad spirit, and not to apply the rules of law too literally.

Wildenhus's Case,[1] decided early in January, brought up a point of importance in international law affirming the right of a State to take jurisdiction of a crime committed by a foreigner against a foreigner upon a foreign merchant vessel anchored in one of the ports of the State.

But undoubtedly the cause that has attracted most attention this winter, although it cannot be deemed of such overweening importance, aside from the magnitude of the pecuniary interests involved, is that known as the *Telephone Cases*. Popular interest in these suits was excited to a high degree, stimulated by a notoriety due to the utter recklessness with which attacks were made by the one side and the other upon all persons, high or low, supposed to be opposed to them. During the whole of each sitting, for the twelve days devoted by the court to hearing the cases argued, the court-room was filled with spectators, eager to witness the conflict. All the parties were represented by counsel of eminence; but the Bell Company had the advantage of a concentration of effort and unity of purpose on the part of its representatives that was far from existing among the appellants, whose interests were distinct and in some degree conflicting, as their counsel took pains to point out. The merits of the controversy, in which no decision has yet been rendered, have been freely canvassed, and those who most carefully followed the proceedings have arrived at very different conclusions.

Not the least reproach upon the memory of the 49th Congress is its failure to provide any relief for the condition of business before the Supreme Court. It has long been notorious that, owing to the overcrowded condition of the docket, no case could be reached for argument, in its regular order, in less than three years after the appeal was filed; and, although the liberal rule allowing any case on the docket to be submitted on printed briefs without argument during the first ninety days of the term prevents any notable increase of delay, and lessens the hardship in many instances, yet the court is unable to make any headway in clearing off its arrears. The evil is a serious one, oppressive to suitors and encouraging frivolous appeals, and it is an evil which the court itself is powerless to remedy.

Anything which tends to lessen the expense of litigation is a source of congratulation, and such will be the effect, as to appeals here, of a rule recently promulgated by the Supreme Court. Heretofore it has been the practice to print the entire transcript of record from the court below, often at an expense of hundreds of dollars, although the questions involved in the appeal might require only a small part of it for their proper determination. The rule announced from the bench on the last Monday in March will go far to stop this; it gives permission to the appellant to print only so much as he deems necessary, unless required by the appellee to print other parts, and, by reserving full power as to allowing costs, the court provides for protecting either side from the unfair exercise of its rights by the other.

Two acts of some importance as to judicial matters were passed at the last session: the one to amend and regulate the law as to the jurisdiction of the United States Circuit Courts, and the other providing for the

[1] 120 U.S. 1.

prosecution of claims against the government. The effect of the former[1] in some of its provisions can only be fully determined by judicial interpretation. Section 1 amends the Act of March 3, 1875;[2] it leaves the original jurisdiction of the Circuit Court as at present, except in raising the value of the matter in dispute, required to give jurisdiction, from $500 to $2000, and in making this a requisite in all civil suits, whether the ju isdiction therein is founded on the subject-matter of the controversy or on the citizenship of the parties; and in altering the provision as to suits by assignees of choses in action so as, apparently, to give jurisdiction of them only in cases of foreign bills of exchange, unless the assignor himself could have sued in the Circuit Court. Removal for local prejudice is still allowed in the same cases as formerly, but express provision is made for trying the truth of the affidavit alleging local prejudice; and it is also enacted that if only one of several defendants is entitled to remove the suit on this ground, and if it appears that the rights of the parties will not be impaired by a severance, then the cause shall be remanded to the State court as to all the other defendants. The act also makes the decision of the Circuit Court, that a case has been improperly removed, final, and allows no appeal or writ of error from the order remanding it, thus leaving the party to whatever remedy he may have by writ of error to the highest court of the State. Other sections contain provisions as to receivers appointed by federal courts, and, following the act of July 12, 1882,[3] make national banks suable as citizens of the States in which they are situated. The act closes with a section prohibiting any judge in any court of the United States from appointing any relative, within the degree of first cousin, to an office or duty in the court of which such judge is a member,—a measure suggested by the alleged abuses or improprieties said to exist in some of the Circuit and District Courts.

The act as to bringing suits against the government[4] gives the Court of Claims jurisdiction of all claims against the United States, founded on the Constitution, any act of Congress except for pensions, any regulation of the Executive Department, or any contract, or for damages, in cases not sounding in tort, in respect of which claims redress could be had if the United States were suable, and also of all counter-claims set up by the government; it also gives the District Courts concurrent jurisdiction in cases involving less than $1000, and the Circuit Courts concurrent jurisdiction in cases involving more than $1000, but less than $10,000. Special provision is made for closing up accounts with the government, and detailed regulations are laid down as to conducting the litigation provided for.

The volume of law business done in Washington is very considerable. There are multitudinous claims prosecuted before the departments by attorneys midway between lobbyists and lawyers, and also the business naturally arising in a city of this size and character, of which the courts of the District have jurisdiction. The important work, however, is that before the Supreme Court and the Court of Claims. Practice before the latter is chiefly in the hands of lawyers living in this city; but the same is no longer true in regard to the higher tribunal. Formerly, owing to the difficulty of communication, it was customary for cases brought here on appeal to be put in the hands of men living

[1] Public, No. 159, March 3, 1887.
[2] 18 Stat., 470.
[3] 22 Stat., 162.
[4] Public, No. 145, March 3, 1887.

at the capital, and as a consequence, a comparatively small number conducted nearly all the cases; but the increased facilities for travel have broken down the old order, and now lawyers come on from all parts of the country to argue their cases in person. As a result of this change there are very few men who are to any degree exclusively engaged in practice before the Supreme Court. One such may, indeed, be mentioned, — a man whose name is heard by the public less often than his abilities deserve; this is Hon. John A. Campbell, an ex-justice of the court. Judge Campbell resigned his seat upon the bench during the Civil War, and, like Judge Curtis, returned to practise at the bar. He now appears from time to time as counsel before the tribunal of which he was once a distinguished member, and never without effect. Judge Campbell takes but few cases in the course of a year, and his great talents, together with a habit of shutting himself up and becoming thoroughly saturated with the cause in which he is engaged, enable him to get a thorough grasp of each one to its minutest details. His arguments are masterpieces; indeed, one of them, — that in *New Hampshire* v. *Louisiana*,[1] — has often been declared to equal any ever made in the court.

D.

[1] 108 U. S. 76.